

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

UNITED STATES OF AMERICA, )  
                                )  
Plaintiff,                 )  
                                )         4:20-00139-01-CR-W-DGK  
v.                            )  
                                )  
JAMES E. HORNE, JR.,      )  
                                )  
Defendant.                 )

**ORDER ADOPTING REPORT AND RECOMMENDATION CONCERNING  
DEFENDANT'S COMPETENCY**

On July 23, 2020, Defendant James Horne's counsel filed a request for a competency evaluation, and the Court granted that motion. ECF Nos. 20, 22.

On January 15, 2021, the Court received an evaluation from David Szyhowski, Psy.D., who opined Defendant was competent to understand the nature and consequences of the proceeding against him and could properly assist in his defense. ECF No. 34.

On February 26, 2021, Magistrate Judge W. Brian Gaddy held a competency hearing. At that hearing, Defendant proffered (1) he did not have a conversation with Dr. Szyhowski regarding the ease or difficulty of his mother's pregnancy, even though Dr. Szyhowski included a conversation of such nature in his report, and (2) he did not understand the Minnesota Multiphasic Personality Inventory 2 ("MMPI-2") administered and cellmates helped him complete it. R. & R., ECF No. 44, at 2.

The Court found the first proffer had no bearing on the competency determination but could not determine the role the second proffer had on Dr. Szyhowski's determinations. The Court contacted Dr. Szyhowski by telephone, who testified regarding his use of the MMPI-2. He indicated that he could not rely on Defendant's responses to the MMPI-2, and he therefore used other indicators to make his determination. Dr. Szyhowski also testified that, even if Defendant

had received help from some other inmate in filling out the MMPI-2, his opinion on Defendant's competency would not change as his final opinion was based on numerous factors, of which the MMPI-2 was merely one.

On March 3, 2021, Judge Gaddy issued a report and recommendation finding Defendant is competent to proceed. Neither party objected to the report and recommendation.

After making an independent review of the record, it is

**ORDERED** that the Report and Recommendation of Magistrate Judge Gaddy is adopted in its entirety, and this Court finds that Defendant is competent. It is further

**ORDERED** that, pursuant to 18 U.S.C. §§ 3161(h)(1)(A) and (h)(4), the time between July 23, 2020, and the date of this order is excluded in computing the time within which the trial of this criminal action must commence.

**IT IS SO ORDERED.**

Date: April 22, 2021

/s/ Greg Kays  
GREG KAYS, JUDGE  
UNITED STATES DISTRICT COURT